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9 Attorneys for Plaintiff  
10 FENDER MUSICAL INSTRUMENTS  
CORPORATION

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 FENDER MUSICAL INSTRUMENTS  
CORPORATION,

16  
17 Plaintiff,

18 v.

19 WIN-D-FENDER, LLC; ARGYLE  
INTERNATIONAL, INC.; NATHAN  
20 MARK DOOLY; AND CLEMENT  
KWOK,

21 Defendants.  
22

Case No. 2:23-cv-06129

**COMPLAINT FOR TRADEMARK  
INFRINGEMENT, INJUNCTIVE  
RELIEF, AND OTHER RELIEF**

**JURY TRIAL DEMANDED**

23 Plaintiff Fender Musical Instruments Corporation (“Fender”), as and for its  
24 Complaint against Defendants Win-D-Fender, LLC (“Win-D-Fender”)Argyle  
25 International, Inc. (“Argyle”), Nathan Mark Dooly, and Clement Kwok,  
26 (collectively, “Defendants”), hereby alleges as follows:  
27  
28

## PRELIMINARY STATEMENT

1  
2 1. This action arises from Defendants’ repeated, willful and improper use  
3 of Plaintiff’s famous iconic trademark FENDER in both word and stylized forms  
4 (the “FENDER Marks”), marks that have been in use for over 70 years in  
5 connection with famous musical instruments and related goods. Despite being  
6 well-aware of Fender’s rights, and good-faith requests by Fender to Defendants for  
7 Defendants to modify Defendants’ names, Defendants nevertheless continue to sell  
8 goods related to musical instruments utilizing the name Fender (“Win-D-Fender”  
9 and “En-D-Fender”) and wrongfully exploiting Fender’s mark and goodwill for  
10 Defendants’ illicit gains.

11 2. Fender has invested significant effort and resources, over the course of  
12 several decades, in advertising and promoting the Fender Marks, establishing  
13 widespread goodwill in the United States and abroad for its famous Fender Marks.  
14 The Marks have been used in connection with electric guitars played by Jimi  
15 Hendrix, Bruce Springsteen, Bob Dylan, and more, and also used in connection  
16 with other Fender Marks-branded musical accessories and instruments, including  
17 harmonicas, which are wind instruments.

18 3. Through their Win-D-Fender Domain and other points of sale,  
19 Defendants promote and offer goods substantially similar to the goods Fender has  
20 offered, and continues to offer, via its own Internet website, under designations  
21 substantially similar to Fender’s trademarks, including the designations “Win-D-  
22 Fender” and “En-D-Fender.” Defendants target identical or substantially similar  
23 markets and customers as those targeted by Fender.

24 4. There is significant overlap in the target markets for the services of  
25 Fender and Defendants. Both offer musical instrument-related goods and are  
26 targeted at, among others, musicians, as well as schools and music educators.  
27 Fender also markets and sells wind instruments, which are the same genre of  
28 instrument for which Defendants make and manufacture their products.

1           5.       Despite repeated requests from Fender and multiple efforts to resolve  
2 these issues, Defendants have refused to agree to withdraw or modify their use of  
3 designations substantially similar to the Fender Marks.

4           6.       Upon information and belief, in choosing the designations “Win-D-  
5 Fender” and “En-D-Fender” to sell musical instrument accessories and related  
6 goods as the title of its website, and with the Fender Marks as the predominant  
7 portion of their Win-D-Fender Domain, Defendants are attempting to illegally  
8 benefit from the reputation and goodwill Fender has built in its musical instruments  
9 and related goods and, in particular, Fender’s FENDER Marks.

10          7.       By this action, Fender seeks monetary and injunctive relief related to  
11 Defendants’ improper use of the names and designations “Win-D-Fender” and “En-  
12 D-Fender,” including Defendants’ improper reservation and use of a substantially  
13 similar Internet domain name (www.win-d-fender.com) and Defendants’  
14 infringements of Fender’s Fender Marks’ rights including but not limited to  
15 registered trademarks FENDER® and FENDER® stylized logo. Fender is entitled  
16 to recover from Defendants, without limitation, all damages that it has sustained  
17 and will sustain, and all gains, profits, and advantage obtained by Defendants as a  
18 result of their infringing acts as well as a preliminary and permanent injunction  
19 barring Defendants from, among other things, using the Fender Marks or any other  
20 mark, name, or title that incorporates the term FENDER or any colorable imitation  
21 thereof or designations similar thereto, including but not limited to the designations  
22 Win-D-Fender and En-D-Fender, in connection with the offering, sale, or  
23 promotion of musical instrument accessories and related goods.

24          8.       Fender further brings this action for infringement of its trademark  
25 registrations under the Lanham Act; trademark dilution by blurring under the  
26 Lanham Act; unfair competition under the Lanham Act; unfair competition arising  
27 under California common law; unfair competition under California Business &  
28 Professional Code; trademark infringement under California Business &

1 Professional Code; cybersquatting under the Anti-Cybersquatting Consumer  
 2 Protection Act; all against Defendants by virtue of their infringing uses.

### 3 **PARTIES**

4 9. Plaintiff Fender Musical Instruments Corporation is a Delaware  
 5 corporation, having its principal place of business at 1575 N Gower Street,  
 6 Suite 170, Los Angeles, CA 90028, and which sells millions of dollars' worth of its  
 7 products into this District.

8 10. On information and belief, Defendant Win-D-Fender, LLC is a Texas  
 9 limited liability company, having its principal place of business at 2650 FM 407 E,  
 10 Bartonville, Texas 76226.

11 11. On information and belief, Defendant Argyle International, Inc. is a  
 12 Texas corporation, having its principal place of business at 133 FM 407 W, Argyle,  
 13 Texas 76226

14 12. Upon information and belief, Defendant Nathan Mark Dooly is a  
 15 resident of Texas and a founder and owner of Defendants Win-D-Fender LLC and  
 16 Argyle International Inc.

### 17 **JURISDICTION AND VENUE**

18 13. This Court has subject matter jurisdiction over this action pursuant to  
 19 15 U.S.C. § 1121(a) (action arising under Lanham Act) and 28 U.S.C. §§ 1331  
 20 (federal question) and 1338(a) (any Act of Congress relating to patents or  
 21 trademarks). This Court has supplemental jurisdiction pursuant to 28 U.S.C.  
 22 § 1367(a) for all other claims asserted in this Complaint because those claims are so  
 23 closely related to the federal claims asserted herein as to form part of the same case  
 24 and controversy.

25 14. Defendants are subject to the personal jurisdiction of this Court under  
 26 Fed. R. Civ. P. 4 because, upon information and belief, Defendants regularly  
 27 transact, conduct, and solicit business in this District, or engage in other persistent  
 28 courses of conduct and/or derives substantial revenue from its goods sold in this

District. Upon information and belief, Defendants regularly transact, conduct, and solicit business with retailers, including without limitation, Guitar Center, which owns retail locations located within this District. Furthermore, among other places, Defendants target their advertising and sale of their products to consumers and others in this District, and have realized revenues from such advertising and sales.

15. Venue is proper in this federal judicial district under 28 U.S.C. § 1391(b) and (c), because a substantial part of the events giving rise to the claims asserted herein occurred in this District.

## **FACTS**

### **I. FENDER'S TRADEMARKS**

#### **A. The FENDER® Trademark Registrations**

16. Fender is the owner of four incontestable US federal trademark registrations, with Reg. Nos. 805075 and 4302401 in the FENDER® word mark, and Reg. Nos. 805510 and 1256824 in the FENDER® stylized logo mark. (True and correct copies of Fender's Certificates of Registration are attached hereto as **Exhibits A, B, C, and D**, respectively.)

17. Additionally, Fender owns and operates an Internet website found at [www.fender.com](http://www.fender.com).

18. Fender's US federal Fender Marks registrations cover the following goods:

International Class 9: ELECTRIC APPARATUS FOR USE WITH GUITARS AND FOR OTHER PURPOSES - NAMELY, AMPLIFIERS, LOUDSPEAKERS, AND COMPONENTS AND ACCESSORIES FOR SUCH ELECTRICAL APPARATUS - NAMELY, AMPLIFIER CORDS, AMPLIFIER COVERS, FOOT PEDAL CONTROLS, AMPLIFIER HANDLES, AMPLIFIER KNOBS, AMPLIFIER CORNERS, AMPLIFIER VOLUME AND TONE CONTROLS, SPEAKER CABINETS, AND AMPLIFIER

1 LEGS.

2 International Class 15: MUSICAL INSTRUMENTS - NAMELY,  
3 ELECTRIC SPANISH GUITARS, ELECTRIC BASSES,  
4 ACOUSTIC GUITARS, AND COMPONENTS AND  
5 ACCESSORIES FOR GUITARS AND THE LIKE - NAMELY,  
6 CASES, BAGS, STRINGS, POLISH, PICKS, NECKS, HEADS,  
7 PICKUPS, PICKUP COVERS, PICKGUARDS, BRIDGE COVERS,  
8 TREMOLO HANDLES, CONTROL KNOBS, AND STRAPS.

9 **Exhibits A and C.**

10 International Class 9: Guitar cables.

11 International Class 15: Capos; Cases for musical instruments; Guitar  
12 accessories, namely, guitar slides; Guitar picks; Guitar straps; Guitar strings.

13 **Exhibit B.**

14 International Class 15: Electric Guitars and Electric Bass Guitars.

15 **Exhibit D.**

16 19. Fender obtained two registrations on its Fender Marks with the United  
17 States Patent and Trademark Office (the "USPTO") on August 6, 1965. Exhibits A  
18 and C. Its other Fender Marks USPTO registrations followed on November 9, 1983  
19 and March 12, 2013. **Exhibits B and D.**

20 20. Since at least as early as 1946, Fender has used, and is presently using,  
21 the distinctive Fender Marks in interstate commerce in the United States to market  
22 and promote its musical instruments and related goods.

23 21. Since at least as early as 2014, Fender has used, and is presently using,  
24 the distinctive Fender Marks in interstate commerce in the United States to  
25 particularly market and promote its harmonicas.

26 **II. FENDER'S PROMOTION OF ITS FENDER MARKS**

27 22. Fender owns and operates the Internet website accessible through the  
28 domain name www.fender.com (registered by Fender and/or its predecessors on or

1 about January 20, 1995), which promotes and offers for sale Fender's goods,  
 2 including musical instruments such as electric guitars and harmonicas, as well as  
 3 related accessories and goods. **Exhibit E.**

4 23. Fender markets its goods and promotes its famous brands and  
 5 trademarks throughout the United States and the world. Specifically, Fender  
 6 prominently displays its trademarks on its Internet websites and in product  
 7 literature featuring and promoting its website and goods, and in addition to direct  
 8 sales, sells its goods through a variety of distributors and sellers. See **Exhibit E**;  
 9 **Exhibit F**, containing product literature; **Exhibit G**, containing evidence of direct  
 10 sales and sales through high-end distributors and sellers.

11 24. Fender has expended substantial time, money, and resources building  
 12 and maintaining the substantial goodwill associated with its marks and website,  
 13 which are valuable assets and critical to its business.

14 25. Fender's distinctive Fender Marks are widely recognized by the  
 15 general consuming public of the United States as a designation of source of the  
 16 goods of Fender.

### 17 **III. DEFENDANTS' INFRINGING ACTIVITIES**

#### 18 **A. Defendants' Infringing Promotion and Sales**

19 26. Defendants have been using the terms "Win-D-Fender" and "En-D-  
 20 Fender" in connection with the promotion and offering of musical instrument  
 21 accessory goods substantially similar to musical instruments and musical  
 22 instrument accessory goods offered by Fender under the Fender Marks.

23 27. Upon information and belief, on or about February 2017, Defendants  
 24 reserved the Internet domain name www.win-d-fender.com ("Win-D-Fender  
 25 Domain") and, through that domain under the designations "Win-D-Fender" and  
 26 "En-D-Fender," began promoting and offering goods substantially similar to the  
 27 goods offered by Fender. Printouts of representative webpages of the Win-D-  
 28 Fender Domain are attached hereto as **Exhibit H.**



28. Upon information and belief, Defendants Argyle and Dooly's Win-D-Fender Domain is accessible throughout the United States and the world via the Internet, including in this District.

29. Defendants promote and offer goods that are related to the goods that Fender has offered, and continues to offer, via its own Internet website, under designations that are substantially similar to Fender's trademarks, including the designations "Win-D-Fender" and "En-D-Fender." **Exhibit H.**

30. Upon information and belief, Defendants target identical or substantially similar markets and customers as those targeted by Fender. For example, a google search using the search terms "Fender wind" yields the a search result displaying Defendants' products marketed and advertised for sale.

31. There is significant overlap in the target markets and customers for the services of Fender and Defendants. For example, both Fender and Defendants sell their goods through national retailers such as Guitar Center, Sweetwater, and Musician's Friend. Defendants are attempting to illegally benefit from the reputation and goodwill Fender has built in its musical instruments and related goods and, in particular, Fender's FENDER Marks.

#### **B. Details of Defendants' Infringing Website**

32. On information and belief, Defendants registered the domain name www.win-d-fender.com with actual or constructive knowledge of Fender's registered service mark rights in its Fender Marks.

33. On information and belief, Defendants registered the Win-D-Fender Domain with the intent to divert consumers seeking Fender's online site to a different site, thus harming the goodwill symbolized by Fender's marks and creating a likelihood of confusion as to the source of goods offered under the domain names or as to the source, sponsorship, or affiliation of the websites connected with the various domain names.

///



1           34. On information and belief, Defendants registered and used the Win-D-  
2 Fender Domain with the bad faith intent to profit directly by their own use of the  
3 domain name.

4           35. On information and belief, Defendants registered and used the Win-D-  
5 Fender Domain with the bad faith intent to profit indirectly by harming Fender  
6 through diverting or confusing consumers and potential consumers.

7           **C. Defendants’ Infringing US Trademark Applications and**  
8           **Registrations, and Related TTAB Proceedings**

9           36. On October 9, 2020, Defendant Win-D-Fender filed a US trademark  
10 application in the moniker EN-D-FENDER, for “Musical Instruments” in  
11 International Class 15, Serial No. 90/244,604, and claiming a first use date of  
12 October 8, 2020 (“EN-D-FENDER Application”). **Exhibit I.** Subsequently, on  
13 June 8, 2021, Fender advised Defendants in writing that Defendants’ use of  
14 confusingly similar marks is likely to cause confusion among consumers as to both  
15 the source of Defendants’ products, as well as to an authorized affiliation,  
16 connection or sponsorship by or with Fender, and Fender suggested that the parties  
17 engage in a conversation to discuss the issues and consider mutually agreeable  
18 terms for a period in which Defendants could transition away from their putative  
19 marks. Nevertheless, Defendants did not meaningfully engage with Fender and  
20 proceeded with their application and use of their confusingly similar marks.

21           37. On October 15, 2021, Fender was constrained to file an opposition  
22 proceeding at the Trademark Trial and Appeal Board (“TTAB”), against the EN-D-  
23 FENDER Application (“EN-D-FENDER Opposition”). **Exhibit J.**

24           38. On January 12, 2023, the TTAB sustained Fender’s EN-D-FENDER  
25 Opposition, and the EN-D-FENDER Application was subsequently abandoned.  
26 **Exhibit J.**

27           39. Although Defendant Win-D-Fender lost the EN-D-FENDER  
28 Opposition, Defendants continue to use the En-D-Fender designation to sell

1 musical instrument accessories and related goods, despite Fender's repeated  
2 requests that they cease and desist from use of that designation.

3 40. On March 21, 2017, Defendants Argyle filed a US trademark  
4 application in the moniker WIN-D-FENDER, for "Musical Instrument Accessories,  
5 namely, a wind guard mounted to a flute" in International Class 15, Serial  
6 No. 87/379,289, and claiming a first use date of March 10, 2017. **Exhibit K.**

7 41. On June 25, 2018, the WIN-D-FENDER Application registered with  
8 the USPTO ("WIN-D-FENDER Registration"), with Registration No. 5,483,745.  
9 **Exhibit K.**

10 42. On October 15, 2021, Fender filed a cancellation proceeding at the  
11 Trademark Trial and Appeal Board ("TTAB"), against the WIN-D-FENDER  
12 Registration ("WIN-D-FENDER Cancellation").

13 43. The WIN-D-FENDER Cancellation is ongoing, and Defendants  
14 continue to use the Win-D-Fender designation to sell musical instrument  
15 accessories and related goods, despite Fender's repeated requests that they cease  
16 and desist from use of that designation and attempts to resolve their issues.

17 44. By reason of Defendants' wrongful acts, Fender has been seriously and  
18 irreparably damaged, and, unless Defendants are restrained, Fender will continue to  
19 be so damaged.

## 20 **COUNT I**

### 21 **Infringement of Plaintiff's Registered Service Marks** 22 **in Violation of § 32(1) of the Lanham Act, 15 U.S.C. §1114(1)**

23 45. Fender incorporates by reference the preceding paragraphs as if fully  
24 set forth herein.

25 46. Defendants' use of Fender's Fender Marks and marks confusingly  
26 similar thereto, including designations "Win-D-Fender" and "En-D-Fender," in the  
27 conduct of its business is likely to continue to cause confusion, or to cause mistake,  
28 or to deceive consumers and others. By reason of Defendants' acts set forth above,

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1 Fender is being irreparably injured and has no adequate remedy at law.  
2 Defendants' past and continued use in commerce of the Fender Marks and marks  
3 confusingly similar thereto to promote and market its identical and/or substantially  
4 similar goods constitutes infringement of Fender's federally registered trademarks,  
5 in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

6 47. Fender is entitled to recover from Defendants all costs and damages  
7 that Fender has sustained and will sustain, in addition to all gains, profits and  
8 advantages obtained by Defendants as a result of its infringing acts alleged above,  
9 in an amount not yet determined, pursuant to Section 35 of the Lanham Act, 15  
10 U.S.C. § 1117.

11 48. By reason of Defendants' intentional and willful dilution of the Fender  
12 Marks, Fender has been, and will continue to be, irreparably harmed unless  
13 Defendants are permanently enjoined from their unlawful conduct.

## COUNT II

### **Dilution by Blurring under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)**

17 49. Fender incorporates by reference the preceding paragraphs as if fully  
18 set forth herein.

19 50. The Fender Marks are famous and became famous well before  
20 Defendants' use of their Win-D-Fender and En-D-Fender designations.

21 51. Defendants' use of Fender's Fender Marks and designations "Win-D-  
22 Fender" and "En-D-Fender" are substantially similar to Fender's prior used and  
23 registered Fender Marks such that they are likely to dilute the distinctive quality of  
24 the Fender Marks by blurring under section 43(c) of the Lanham Act, 15 U.S.C.  
25 § 1125(c).

26 52. Fender is entitled to recover from Defendants all costs and damages  
27 that Fender has sustained and will sustain, in addition to all gains, profits and  
28 advantages obtained by Defendants as a result of its infringing acts alleged above,

1 in an amount not yet determined, pursuant to Section 35 of the Lanham Act, 15  
2 U.S.C. § 1117.

3 53. By reason of Defendants' intentional and willful dilution of the Fender  
4 Marks, Fender has been, and will continue to be, irreparably harmed unless  
5 Defendants are permanently enjoined from their unlawful conduct.

### 6 **COUNT III**

#### 7 **Unfair Competition under Section 43(a)** 8 **of the Lanham Act, 15 U.S.C. § 1125(a)**

9 54. Fender incorporates by reference the preceding paragraphs as if fully  
10 set forth herein.

11 55. Defendants' use of the Fender Marks or marks substantially similar  
12 thereto, including designations "Win-D-Fender" and "En-D-Fender," in the conduct  
13 of their business is calculated to cause confusion and deception.

14 56. The public and the trade are likely to believe that the goods offered by  
15 Defendants are licensed, sponsored, authorized, approved, or in some other way  
16 associated or connected with Fender's business conducted under the Fender Marks.

17 57. Defendants have deliberately and willfully attempted to mislead the  
18 public and the trade into believing that Defendants' goods are sponsored,  
19 authorized, or approved by or are in some other way associated with Fender.

20 58. Defendants, by reason of their acts set forth above, have made, and  
21 will continue to make profits, to which they are not in equity or in good conscience  
22 entitled. By reason of Defendants' acts set forth above, Fender is being irreparably  
23 injured and has no adequate remedy at law. Defendants' acts set forth above  
24 constitute a false association and unfair competition in violation of Section 43(a) of  
25 the Lanham Act, 15 U.S.C. § 1125(a).

26 59. By reason of Defendants' intentional and willful infringement of the  
27 Fender Marks, Fender has been, and will continue to be, irreparably harmed unless  
28 Defendants are permanently enjoined from their unlawful conduct.

60. Fender is entitled to recover from Defendants all costs and damages that it has sustained and will sustain, and all gains, profits and advantage obtained by Defendants as a result of their infringing acts alleged above, in an amount yet to be determined.

### COUNT IV

## Unfair Competition – California Common Law

61. Fender incorporates by reference the preceding paragraphs as if fully set forth herein.

62. Fender has invested substantial time, skill, and money in developing the Fender Marks associated with musical instruments and related goods that it offers for sale.

63. Defendants have appropriated and used the Fender Marks, or marks substantially similar thereto, in relation to musical instrument accessories and related goods at little or no cost to Defendants.

64. Defendants' appropriation and use of the Fender Marks, or marks substantially similar thereto, was without the authorization or consent of Fender.

65. Fender has been and is continuing to suffer ongoing injury by virtue of Defendants' conduct.

66. By reason of Defendants' conduct, Fender has been, and will continue to be, irreparably harmed unless Defendants are preliminarily and permanently enjoined from their unlawful conduct.

67. Fender is entitled to recover from Defendants all damages that it has sustained and will sustain, and all gains, profits and advantage obtained by Defendants as a result of their acts alleged above, in an amount yet to be determined.

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## COUNT V

### **Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200 et seq.**

68. Fender incorporates by reference the preceding paragraphs as if fully set forth herein.

69. Defendants' unauthorized use of Win-D-Fender and En-D-Fender is likely to confuse or mislead customers into believing that such products are authorized, licensed, affiliated, sponsored and/or approved by Fender, constituting deceptive, unfair, and fraudulent business practices and unfair competition in violation of Cal. Bus. & Prof. Code 17200 et seq.

70. Upon information and belief, Defendants' unlawful activities are intended to capitalize on the goodwill and reputation of Fender, which Fender has expended substantial time, resources and effort to acquire.

71. As a direct and proximate result of the foregoing acts, Fender has suffered, and will continue to suffer, significant injuries in an amount to be determined at trial.

72. Because Fender has no adequate remedy at law for Defendants' ongoing unlawful conduct, Fender is entitled to injunctive relief prohibiting Defendants from engaging in unfair competition under California law.

73. Fender is entitled to recover from Defendants all damages that it has sustained and will sustain, and all gains, profits and advantage obtained by Defendants as a result of their acts alleged above, in an amount yet to be determined.

## COUNT VI

### **Trademark Infringement in Violation of Cal. Bus. & Prof Code § 14200 et seq**

74. Fender incorporates by reference the preceding paragraphs as if fully set forth herein.

75. The Fender Marks are famous and distinctive, and are widely recognized by the general consuming public of California as a designation of source of the goods or services of Fender as the owner of the Fender Marks.

76. The Fender Marks became famous prior to commencement of the use of designations “Win-D-Fender” and “En-D-Fender” by Defendants.

77. At the time that Defendants commenced use of the designations “Win-D-Fender” and “En-D-Fender,” and at all times thereafter, Defendants knew or should have known that the designations “Win-D-Fender” and “En-D-Fender” were similar to the Fender Marks and that Defendants’ use and advertisement of the designations “Win-D-Fender” and “En-D-Fender” would cause dilution of the famous Fender Marks.

78. At the time that Defendants commenced use of the designations “Win-D-Fender” and “En-D-Fender,” and at all times thereafter, Defendants willfully intended to dilute the famous Fender Marks.

79. By reason of Defendants’ conduct, Fender has been, and will continue to be, irreparably harmed unless Defendants are preliminarily and permanently enjoined from their unlawful conduct.

80. Fender is entitled to recover from Defendants all damages that it has sustained and will sustain, and all gains, profits and advantage obtained by Defendants as a result of their acts alleged above, in an amount yet to be determined.

## **COUNT VII**

### **Violation of Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. 1125(d)**

81. Fender incorporates by reference the preceding paragraphs as if fully set forth herein.

82. Fender has suffered harm by virtue of Defendants’ bad faith registration and use of the Win-D-Fender Domain at [www.win-d-fender.com](http://www.win-d-fender.com)



1 because Fender's own marks have been diluted by Defendants' actions, which have  
2 diminished the capacity of Fender to use its marks to identify and distinguish its  
3 services on the internet.

4 83. Fender has suffered harm by virtue of Defendants' bad faith  
5 registration and use of the Win-D-Fender Domain because consumers and potential  
6 consumers have not been able to locate Fender through a web address that includes  
7 the Fender Marks.

8 84. Defendants violated the Anti-Cybersquatting Consumer Protection Act  
9 ("ACPA"), 15 U.S.C. § 1125(d), by registering the Win-D-Fender Domain with the  
10 bad faith intent to profit from the registration and use of the domain name, when the  
11 domain name contained Fender's trademark(s), and those marks were in use,  
12 known, and distinctive at the time Defendants registered the domain name.  
13 Defendants' wrongful activities have caused injury to Fender by preventing it from  
14 using its marks in its web address, harming the goodwill represented by the marks,  
15 and creating a likelihood of confusion as to source, sponsorship, affiliation or  
16 endorsement of the websites of Fender and Defendants connected with the domain  
17 names.

18 85. Defendants' violation of Section 1125(d)(1) entitles Fender to recover  
19 statutory damages under 15 U.S.C. § 1117(d) of up to \$100,000 per domain name,  
20 or its actual damages and Defendants' profits, at the election of Fender. In the  
21 Court's discretion, Fender's actual damages may be trebled.

22 86. By reason of Defendants' conduct, Fender has been, and will continue  
23 to be, irreparably harmed unless Defendants are preliminarily and permanently  
24 enjoined from their unlawful conduct.

25 87. Furthermore, Defendants' conduct makes this an exceptional case  
26 under 15 U.S.C. § 1117(a). Consequently, this Court may, and Fender requests this  
27 Court to, award Fender's reasonable attorney's fees as the prevailing party.

28 ///

**PRAYER FOR RELIEF**

WHEREFORE, Fender prays for an order and judgment against Defendants:

A. Providing that Defendants, their agents, employees and all others acting in concert or participation with them, be permanently enjoined from:

i. Using the Fender Marks or any other mark, name, or title that incorporates the term FENDER, or any colorable imitation thereof or designations similar thereto, including but not limited to the designations Win-D-Fender and En-D-Fender, in connection with the offering, sale or promotion of musical instruments and related goods; and

ii. Committing any other act calculated or likely to cause the public or trade to believe that Defendants or their businesses are in any manner connected, licensed, sponsored, affiliated or associated with Fender, or the business of Fender, or from otherwise competing unfairly with Fender; and

iii. Using the Fender Marks or any other mark, name, or title that incorporates the term FENDER, or any colorable imitation thereof or designations similar thereto, including but not limited to the designations Win-D-Fender and En-D-Fender, in any manner in the conduct of business on an Internet website, as a website domain name, or portion thereof.

B. Ordering the impounding of all of Defendants' advertising and promotional material to the extent that it contains any reference to Fender, the Fender Marks or any other mark, name, or title that incorporates the term FENDER, or any colorable imitation thereof or designations similar thereto, including but not limited to the designations Win-D-Fender and En-D-Fender, including all means of producing copies of advertising or promotional material that infringe Fender's rights;

C. Order that all signage, printed material, advertisements and other materials which bear the Fender Marks or any other mark, name, or title that incorporates the term FENDER, or any colorable imitation thereof or designations

1 similar thereto, including but not limited to the designations Win-D-Fender and En-  
 2 D-Fender, or which if used would violate the injunction herein requested, in the  
 3 possession, custody or control of Defendants, be delivered up to Fender for  
 4 destruction;

5 D. Providing that Defendants account to Fender for all profits derived  
 6 from Defendants' wrongful acts of infringement, and order such profits to be paid  
 7 to Fender, and award damages and costs sustained by Fender, with appropriate  
 8 interest, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, with such  
 9 monetary award trebled;

10 E. Awarding to Fender its reasonable attorneys' fees and such other  
 11 compensatory damages as this Court may determine to be fair and appropriate  
 12 pursuant to 15 U.S.C. § 1117(a);

13 F. Awarding to Fender three times the amount of Defendants' profits or  
 14 Fender's damages, whichever is greater, for willful infringement pursuant to 15  
 15 U.S.C. § 1117(b);


16 G. Ordering the forfeiture or cancellation of the www.win-d-fender.com  
 17 domain name, or the transfer of the www.win-d-fender.com domain name to  
 18 Fender, in accordance with 15 USC 1125(d) (1)(C); and

19 H. Granting such other and further relief as this court deems proper and  
 20 necessary.

21  
 22 Dated: July 28, 2023

Respectfully submitted,

DENTONS US LLP

24  
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 26 Nick S. Pujji  
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27 Attorneys for Plaintiff  
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 CORPORATION

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